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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,246	04/26/2000	Nadia M. Corlett	9911-01	2384

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/560,246	Applicant(s) CORLETT, NADIA M.	
	Examiner Jacqueline F Stephens	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/15/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,9,16,19,20 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,9,16,19,20,23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 7/15/04 have been fully considered but they are not persuasive. Regarding the rejection of claims 1, 4, 5, 9, 16, 19, and 20 under 35 U.S.C. 102(b) as being anticipated by Meixner, applicant's arguments are not persuasive. Applicant argues Meixner fails to teach or suggest packaging a single absorbent article to yield an individually packaged single absorbent article that is highly compact and portable. As discussed in the Office Action mailed 2/10/04, the examiner respectfully disagrees based on the fact that Meixner discloses his packaging method and material is designed to package at least one article (col. 15, lines 65-66). Additionally, Meixner demonstrates in Figure 4 a single article 19 in the bag 2. Meixner teaches his packaging method and system is appropriate for packaging absorbent articles (col. 4, lines 23-29). Meixner further recognizes the packaging materials can be expanded and contracted, which enables it to package various types of articles from diverse areas and to fit the commodity being packaged (col. 2, lines 54-62 and col. 4, lines 12-20). The examiner interprets this teaching to also mean the packaging materials and packaging system of Meixner is flexible enough to package different sizes, types, or quantities of articles. Therefore, based on the teachings of Meixner, it is within the level of one of ordinary skill in the art to use the packaging system and materials to package a single absorbent article or a plurality of absorbent articles.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claim 16 recites "reconfiguring the absorbent article such that the volume of space is reduced by at least 30%".

Dependent claim 25 recites "said reconfiguring step includes rolling the absorbent article." Dependent claim 26 recites "said reconfiguring step includes folding the absorbent article." By applicant's own admission, folding the absorbent article may reduce the length, but does not reduce the volume (see Remarks filed 1/23/02, page 5, paragraphs 1-3). It is unclear if applicant is merely claiming a reduction in size (length and width) or a reduction in volume.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international

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application designated the United States and was published under Article 21(s) of such treaty in the English language.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 4, 5, 9, 16, 19, 20, 23, and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Meixner USPN 6321513.

As to claims 1 and 9, Meixner discloses an individually packaged highly compact and portable absorbent article comprising: a single (Meixner discloses his packaging method and material is designed to package at least one article (col. 15, lines 65-66)) compressed absorbent article capable of being compressed and reconfigurable from a normal condition to a compressed condition (col. 9, lines 15-22); and a packaging for retaining the absorbent article in the compressed condition; the absorbent article having three dimensions at least one of which is reduced when the absorbent article is in the compressed condition; the absorbent article occupying a volume of space that is reduced by at least about 30% when the absorbent article is reconfigured from a normal condition to a compressed condition (col. 4, lines 22-31), and the packaging for retaining the single absorbent article when the article is in a compressed condition, yielding an individually packaged compact and portable absorbent article (col. 4, lines 22-31 and col. 15, lines 65-66).

As to claims 4 and 5, Meixner discloses the absorbent article is reconfigured from a normal condition to a compressed condition by negative pressure, and the packaging is configured to retain at negative pressure the compressed absorbent article (col. 3, lines 46-63, col. 4, lines 22-32, col. 6, lines 4-12, and col. 9, lines 15-22).

As to claims 16 and 20, Meixner discloses a method for packaging an absorbent article to yield a single - Meixner discloses his packaging method and material is designed to package at least one article (col. 15, lines 65-66) - individually packaged absorbent article, which is compact and portable, the method comprising the steps of:

- providing a packaging (col. 4, lines 22-24);
- providing a single absorbent article, the absorbent article occupying a volume of space in three dimensions - Meixner discloses his packaging method and material is designed to package at least one article (col. 15, lines 65-66), and any absorbent article inherently occupies a volume of space in three dimensions;
- reconfiguring the absorbent article such that the volume of space is reduced by at least about 30% (col. 4, lines 22-31);
- retaining the absorbent article when reconfigured within the packaging, thereby yielding an individually packaged compact and portable absorbent article (col. 4, lines 22-31; col. 9, lines 15-22; and col. 15, lines 65-66).

As to claim 19, Meixner discloses the absorbent article is reconfigured from a normal condition to a compressed condition by negative pressure, and the packaging is

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configured to retain at negative pressure the compressed absorbent article (col. 3, lines 46-63, col. 4, lines 22-32, col. 6, lines 4-12, and col. 9, lines 15-22).

As to claims 23 and 24, the limitations of rolling and folding are directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

7. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703)308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Examiner
Art Unit 3761

October 25, 2004